Matson Terminals, Inc. *and* Hawaii Teamsters & Allied Workers Union, Local 996. Case 20–CA–132200

September 26, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND SCHIFFER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Hawaii Teamsters & Allied Workers Union, Local 996 (the Union) on July 3, 2014, the General Counsel issued the complaint on July 16, 2014, alleging that Matson Terminals, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain and to furnish relevant and necessary information following the Union's certification in Case 20–RC–121101. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On August 1, 2014, the General Counsel filed a Motion for Summary Judgment. On August 6, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish requested information, but contests the validity of the certification based on its position that the petitioned-for employees are managerial employees and supervisors within the meaning of Section 2(11) of the Act. In addition, the Respondent contends that the Acting Regional Director improperly made credibility resolutions based on the preelection hearing, and that this is a special circumstance warranting an evidentiary hearing before an administrative law judge.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[1] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges that by letter dated June 13, 2014, the Union requested the following information:

> Names, classifications, hourly wage rates, and hire dates for each employee in the unit.

It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of the information. Rather, the Respondent raises as an affirmative defense its contention, rejected above, that the Union was improperly certified. We find that the Respondent unlawfully refused to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Hawaii corporation with offices and a facility located in Honolulu, Hawaii, has been engaging in providing stevedoring and terminal operations.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, purchased and received goods at its

[1] We reject the Respondent's contention that a special circumstance exists because, according to the Respondent, the Acting Regional Director improperly made credibility resolutions based on the preelection hearing. In this regard, we note that the Respondent's request for review in the representation proceeding did not make any such claim and did not seek review of the Acting Regional Director's Decision and Direction of Election on this basis. The Respondent, therefore, is precluded under Sec. 102.67(f) of the Board's Rules from raising the issue in this proceeding. See *Superior Protection, Inc.*, 341 NLRB 267, 267–268 (2004), enfd. 401 F.3d 282 (5th Cir. 2005), cert. denied 546 U.S. 874 (2005); *Ritz-Carlton Hotel Co.*, 321 NLRB 659, 659 fn. 1 (1996), enfd. 123 F.3d 760 (3d Cir. 1997).

Honolulu facility valued in excess of $50,000 from points outside the State of Hawaii.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held by mail ballot, the Union was certified on June 11, 2014, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Container Vessel Stevedoring (CVS) Superintendents, CVS Senior Superintendents, Container Yard (CY) Supervisors and Yard Controllers employed by Matson Terminals, Inc. in its Honolulu, Hawaii operation; excluding CVS Senior Superintendents who work at the Employer's Pier 2 operation, clerical employees, managerial employees, guards and supervisors as defined by the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated June 13 and 26, 2014, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees and, since June 30, 2014, the Respondent has refused to do so. By letter dated June 13, 2014, the Union requested that the Respondent furnish it with the information set forth above that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. By letter dated June 30, 2014, the Respondent refused to furnish the Union with the requested information described above.

We find that these failures and refusals constitute an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since June 30, 2014, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and by failing and refusing to furnish the Union with requested information regarding the terms and conditions of employment of employees in the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested on June 13, 2014.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord: *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Matson Terminals, Inc., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Hawaii Teamsters & Allied Workers Union, Local 996, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Container Vessel Stevedoring (CVS) Superintendents, CVS Senior Superintendents, Container Yard (CY) Supervisors and Yard Controllers employed by Matson Terminals, Inc. in its Honolulu, Hawaii operation; excluding CVS Senior Superintendents who work at the Employer's Pier 2

operation, clerical employees, managerial employees, guards and supervisors as defined by the Act.

(b) Furnish the Union in a timely manner with the information it requested on June 13, 2014.

(c) Within 14 days after service by the Region, post at its facility in Honolulu, Hawaii, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 30, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 26, 2014

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Hawaii Teamsters & Allied Workers Union, Local 996, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time and regular part-time Container Vessel Stevedoring (CVS) Superintendents, CVS Senior Superintendents, Container Yard (CY) Supervisors and Yard Controllers employed by Matson Terminals, Inc. in its Honolulu, Hawaii operation; excluding CVS Senior Superintendents who work at the Employer's Pier 2 operation, clerical employees, managerial employees, guards and supervisors as defined by the Act.

WE WILL furnish the Union in a timely manner with the information it requested on June 13, 2014.

MATSON TERMINALS, INC.

The Board's decision can be found at www.nlrb.gov/case/20-CA-132200 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor

Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.